

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs December 18, 2007

**STATE OF TENNESSEE v. DORIS NELL JONES**

**Appeal from the Circuit Court for Lawrence County**  
**No. 23258 Robert L. Jones, Judge**

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**No. M2007-00791-CCA-R3-CD - Filed February 27, 2008**

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A Lawrence County jury convicted the defendant, Doris Nell Jones, of one count of second degree murder. The trial court sentenced the defendant to eighteen years in the Department of Correction. On appeal, the defendant argues that the trial court erred by allowing certain out of court statements into evidence, and that the state engaged in prosecutorial misconduct based on certain statements made during closing argument. Because the notice of appeal was not timely filed and the record does not support a waiver of the timeliness of the notice, we conclude that we are without jurisdiction to consider the defendant's appeal. Accordingly, the appeal is dismissed.

**Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed**

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and ALAN E. GLENN, JJ., joined.

Claudia S. Jack, District Public Defender; Shipp R. Weems, Assistant District Public Defender, for the appellant, Doris Nell Jones.

Robert E. Cooper, Jr., Attorney General and Reporter; J. Ross Dyer, Assistant Attorney General; T. Michel Bottoms, District Attorney General; James G. White, II, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

This case relates to the defendant's shooting and killing her live-in paramour, an offense which occurred in October 2000. The record reflects that in November 2001, a Lawrence County grand jury indicted the defendant on one count of premeditated first degree murder. Following an April 2003 jury trial, the defendant was convicted of second degree murder and sentenced to a term of eighteen years in the Department of Correction.

The record reflects that the judgment of conviction was entered on June 3, 2003. The record does not contain a motion for a new trial, the trial court's hearing on that motion, or an order denying the motion. The only document that suggests that such a motion was filed is the defendant's notice

of appeal, which was filed with the trial court on April 9, 2007, and states that the trial court entered its order denying the defendant's motion for new trial on March 13, 2007. In its brief, the state noted that the motion for new trial and order denying the motion were absent from the record. However, the defendant did not address the missing documents in her reply brief or in any other filing with this court.

The Tennessee Rules of Appellate Procedure require us to determine whether we have jurisdiction in every case on appeal. Tenn. R. App. P. 13(b). In criminal cases, an appeal as of right lies from a final judgment of conviction. Tenn. R. App. P. 3(b). The appeal is initiated by filing a notice of appeal within thirty days of the final judgment date. Tenn. R. App. P. 4(a). In criminal actions, "if a timely motion or petition under the Tennessee Rules of Criminal Procedure is filed in the trial court by the defendant . . . under Rule 33(a) for a new trial, . . . the time for appeal for all parties shall run from entry of the order denying a new trial . . . ." Tenn. R. App. P. 4(c). Until the trial court denies the motion for a new trial, this court does not have jurisdiction over the case. See, e.g., State v. James Lee Foreman, II, M2002-02595-CCA-R3-CD, 2004 WL 404696, at \*2 (Tenn. Crim. App. Mar. 24, 2004). See also State v. Terry Lynn Byington, No. E2006-02069-CCA-R3-CD, 2007 WL 4167893, at \*1 (Tenn. Crim. App. Nov. 26, 2007) (interpreting Rules 24 and 25 of the Tennessee Rules of Appellate Procedure as "requir[ing] that an appellant . . . ensure that the appellate record contains all documents necessary for the disposition of an appeal on its merits"), perm. app. filed (Tenn. 2008).

In this case, the defendant filed a notice of appeal some forty-five months after the judgment became final. Rule 4(a) of the Tennessee Rules of Appellate Procedure allows this court to waive the timely filing in the interest of justice. The record in this case does not support such a waiver. We note that the issues raised by the appellant are those that must be preserved by filing a motion for new trial. See Tenn. R. App. P. 3(e). The record does not contain a motion for new trial. Therefore, even were we to waive the timely filing requirement of Rule 4(a), no issues have been preserved for review.

### CONCLUSION

Based on the record before this court, we conclude that the notice of appeal was not timely filed. Accordingly, we dismiss the appeal for lack of jurisdiction.

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D. KELLY THOMAS, JR., JUDGE